

Dated: April 6, 2020

Respectfully submitted,

/s/ Brian E. Mason

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was electronically served via the Court's electronic case filing system upon all counsel of record on this 6th day of April 2020:

/s/ Brian E. Mason

Brian E. Mason

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**NATIONAL RIFLE ASSOCIATION OF
AMERICA,**

Plaintiff and Counter-Defendant

and

WAYNE LAPIERRE,

Third-Party Defendant,

V.

ACKERMAN MCQUEEN, INC.,

Defendant and Counter-Plaintiff,

MERCURY GROUP, INC., HENRY MARTIN, WILLIAM WINKLER, MELANIE MONTGOMERY, and JESSE GREENBERG,

Defendants.

Civil Action No. 3:19-cv-02074-G

DECLARATION OF BRIAN E. MASON

Pursuant to 28 U.S.C. § 1746, I, Brian E. Mason, hereby declare as follows:

1. My name is Brian E. Mason. I am over eighteen years of age. I have never been convicted of a felony or misdemeanor involving moral turpitude. I am fully competent to make this declaration. I am a lawyer at Dorsey & Whitney, LLP (“**Dorsey**”) and counsel of record for Ackerman McQueen, Inc. (“**AMc**”), Mercury Group, Inc. (“**Mercury**”), Henry Martin (“**Martin**”), William Winkler (“**Winkler**”), Melanie Montgomery (“**Montgomery**”), and Jesse Greenberg (“**Greenberg**”) (collectively, “**Defendants**”) in the above-captioned matter (the “**Texas Lawsuit**”). I am also admitted pro hac vice representing AMc and Mercury Group in the following lawsuits

in Virginia: *National Rifle Association of America v. Ackerman McQueen, Inc., et al.*, Case Nos. CL19002067, CL19001757, and CL19002886, pending before the Circuit Court for the City of Alexandria, Virginia (collectively, the “*Virginia Lawsuits*”). I have personal knowledge of the facts set forth in this declaration and acknowledge them to be true and correct.

2. On February 3, 2020, I, along with my colleague, Kelsey Taylor, conferred with counsel for Plaintiff (Beth Landes, Jason McKenney, and Michael Collins) regarding the Motion to Compel. During the conference, I repeatedly represented to Plaintiff’s counsel that we were prepared to specifically address each of Plaintiff’s many responses and objections that were deficient. In response, Plaintiff’s counsel told me that we should instead proceed topically because a one-by-one review “won’t get us anywhere.”¹ Based on Plaintiff’s counsel’s instructions, I did just that.

3. Specifically, I raised questions about—and challenged Plaintiff’s positions on—the topics addressed in the Motion to Compel, including, but not limited to the following:

a. Privilege objections, including seeking clarification and whether requests accompanied by relevance objections were being withhold *in toto*, which counsel “took under advisement”;

b. New York Attorney General-related requests, including the Lockton and Carry Guard matters, which I explained Plaintiff put at issue when: (i) it first submitted AMc to a document request on the basis of those matters, which then devolved into full-blown audits that are the basis of the first Virginia lawsuit, Plaintiff’s breach of contract claims in this lawsuit, and AMc’s defamation claim, and (ii) Plaintiff made statements in the media about those initial and subsequent document demands, all of which counsel “took under advisement”;

¹ Cf. ECF 70 at 6 § A (1) & 27 § F.

c. Objections to requests that refer to Wayne LaPierre's deposition and whether Plaintiff is withholding non-privileged, responsive documents based on those references;

d. Requests 22 and 88 that are contradictory, concerning the Brewer Firm's communications with the media and specifically with Danny Hakim of the New York Times, and generally whether Plaintiff would be producing documents and communications with the media, to which counsel responded, "Let me think about it a little more.";

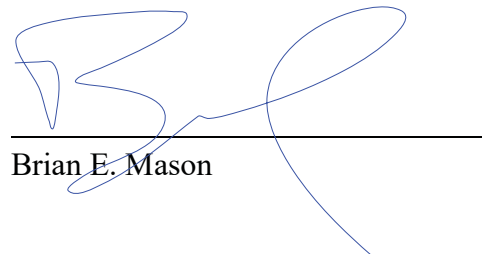
e. The Brewer Firm's public relations work and communications for Plaintiff; and

f. The Brewer Firm's invoices/billing, which I explained are relevant to show why Lieutenant Colonel Oliver North was questioning Brewer's fees, which ultimately led to his ouster, termination of the AMc Services Agreement, and the false extortion narrative, in addition to being relevant for the attorneys' fees Plaintiff seeks. I also referenced specific requests as an example (Nos. 4, 6, 39, 40).

4. Attached hereto as **Exhibit B-1** is a true and correct copy of excerpts from the hearing transcript dated February 6, 2020, *NRA v. AMc, et al.*, Superior Court of Virginia, Cause CL19001757 and CL19002067.

I declare under penalty of perjury and in accordance with 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed this 6th day of April, 2020.



Brian E. Mason

EXHIBIT B-1

In the Matter of:

NRA

v.

Akerman McQueen

Transcript of Hearing

February 6, 2020



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1 V I R G I N I A:

2 IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

3 - - - - - x

4 THE NATIONAL RIFLE
ASSOCIATION OF AMERICA

5
Plaintiff

6 Case Nos. CL19001757

-vs-

7 CL19002067

ACKERMAN MCQUEEN, INC.

7 CL19002886

and

9
MERCURY GROUP, INC.

10
Defendants

11 - - - - - x

12 Alexandria, Virginia
13 Thursday, February 6, 2020

14 The above-entitled matter came on for
15 hearing before THE HONORABLE NOLAN B. DAWKINS,
16 a Judge in and for the Circuit Court for the
17 City of Alexandria, Alexandria, Virginia, in
18 Courtroom 1, pursuant to notice, beginning at
19 10:18 a.m., when there were present on behalf
20 of the parties:

21

22

1 APPEARANCES:

2 On Behalf of the Plaintiff

3 James W. Hundley, Esquire
4 Robert H. Cox, Esquire
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9 On Behalf of the Defendants

10 David H. Dickieson, Esquire
11 Joseph Gonzalez, Esquire
12 David Schertler, Esquire
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14 Brian E. Mason, Esquire
15 Dorsey & Whitney, LLP
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Dallas, Texas 75201

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17 C O N T E N T S

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19 PAGE

20 Proceedings.....3

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Transcript of hearing

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| <p style="text-align: right;">Page 63</p> <p>1 I'm sure Mr. Schertler made just an honest 2 mistake. That's who he is. It wouldn't have 3 been nothing than an honest mistake. He said 4 you already ruled on the breach of fiduciary 5 duty claim. Your Honor, you ruled that they 6 don't have a claim for breach of good faith and 7 fair dealing claim, because that is, in 8 essence, superseded in the services agreement. 9 And it looked like the breach of fiduciary duty 10 claim was, one, duplicative and, two, to try 11 to, you know, get around the plain language of 12 the services agreement. That's what you ruled, 13 your Honor. You didn't -- 14 THE COURT: I'm certainly not prepared 15 to respond to that. 16 MR. COLLINS: Oh, no. No, just giving 17 you context, your Honor. 18 THE COURT: Okay. 19 MR. COLLINS: So I think -- but I 20 think what they just said to your Honor 21 demonstrates that there's no prejudice and, 22 your Honor, especially no unfair prejudice,</p> | <p style="text-align: right;">Page 65</p> <p>1 MR. SCHERTLER: And we just did the 2 first one. And I have a copy for -- 3 THE COURT: I'm getting too old for 4 this. 5 MR. SCHERTLER: Come on, Judge, we're 6 one-eighth of the way through. 7 THE COURT: Whoever the judge is, 8 they're going to hate me. 9 Let's -- I want to do -- the second 10 one I think I can take care of pretty quickly 11 as the -- AMC's motion to -- for in-camera 12 review. That's denied. It's too many 13 documents. I think it's something that the 14 Court is not capable of doing. I think the 15 number of -- just the number of documents that 16 we've already discussed and the number of pages 17 that you've discussed makes it almost 18 impossible for the Court to adequately address. 19 You want to -- yes, sir, 20 MR. GONZALEZ: Yes, your Honor, 21 briefly. We refer to in-camera review. But 22 one of the other matters we raised in that</p> |
| <p style="text-align: right;">Page 64</p> <p>1 because we're going to be doing all that work 2 the same, and Dorsey's here in the Virginia 3 action anyway. 4 But, your Honor, I know you're going 5 to do what you know is -- what you believe is 6 correct. And so but I would still suggest, 7 your Honor, just to delay ruling on this to 8 hear both sides' motions to compel. And I 9 think we'll give you more context. Thank you 10 so much, your Honor. 11 THE COURT: Okay. All right. 12 All right. Just one second. 13 MR. SCHERTLER: Your Honor, if I may, 14 I have a cheat sheet. 15 THE COURT: Yes. Please. 16 MR. SCHERTLER: It lists all the 17 motions that I think we have. Maybe this would 18 help you. 19 THE COURT: I have a cheat sheet too. 20 MR. SCHERTLER: Okay. Your cheat 21 sheet's probably better than mine. 22 THE COURT: Okay. Bring it up. Okay.</p> | <p style="text-align: right;">Page 66</p> <p>1 motion is the issue that is undecided of 2 waiver. It's clear in this case that FRA is 3 the central witness in the first lawsuit. 4 Their documents aren't just important to the 5 case. They are the case. 6 And so, yes, we move for in-camera 7 review. But the reason we also moved is 8 because of what the Judge said, what your Honor 9 said the last time we were here. And I think 10 your Honor acknowledged explicitly -- 11 THE COURT: I know that I said that. 12 I'm certain that I said what I said. But I 13 think that I said that kind of without 14 knowledge of what I've read recently about the 15 number of documents and what I'm going to have 16 to review and make a decision on. And 17 ultimately it seems to me that that would 18 require a trial within a trial. 19 MR. GONZALEZ: Your Honor, there's a 20 simple solution to that. 21 THE COURT: Yes, sir. 22 MR. GONZALEZ: The simple solution is</p> |

Transcript of hearing

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| <p style="text-align: right;">Page 67</p> <p>1 this, grant our motion to compel those</p> <p>2 documents, because there has been a waiver.</p> <p>3 And the facts are incredibly clear on that.</p> <p>4 They were the central witness. They were paid</p> <p>5 by the NRA to interact AMC. And you made the</p> <p>6 allusion to Brady. I think you're exactly</p> <p>7 right. Courts around the country agree with</p> <p>8 you. It's tantamount to withholding Brady</p> <p>9 evidence. It prevents us fundamentally from</p> <p>10 defending ourselves with respect to that</p> <p>11 lawsuit.</p> <p>12 You have two actors here, AMC and FRA.</p> <p>13 They said FRA can get up here and testify. But</p> <p>14 we're not allowed to ask for any documents from</p> <p>15 that witness. That kneecaps us. It</p> <p>16 fundamentally prevents us from doing</p> <p>17 cross-examination. And those documents, if you</p> <p>18 take a look, if you take a look at their</p> <p>19 privilege log, they're what the first lawsuit</p> <p>20 is about. That's what they indicate. They're</p> <p>21 about the document review, the examination that</p> <p>22 occurred.</p> | <p style="text-align: right;">Page 69</p> <p>1 THE COURT: Is that part of your</p> <p>2 motion to compel?</p> <p>3 MR. GONZALEZ: And our most recent --</p> <p>4 and our most recent brief, your Honor.</p> <p>5 THE COURT: Okay. All right. Let's</p> <p>6 hold off. Let's hear your motions to compel,</p> <p>7 and then we'll deal with that later; okay?</p> <p>8 MR. GONZALEZ: Thank you, your Honor.</p> <p>9 And I appreciate that. It's so important to my</p> <p>10 client.</p> <p>11 THE COURT: All right. Let's do that.</p> <p>12 All right. Let's proceed. Let's go.</p> <p>13 Let's do this one, NRA's motion to compel</p> <p>14 supplemental responses to plaintiff's</p> <p>15 interrogatories, motion for sanctions. How</p> <p>16 would you like to proceed?</p> <p>17 MR. COLLINS: Judge, just very</p> <p>18 briefly, I have mentioned to people here that I</p> <p>19 have a health condition.</p> <p>20 THE COURT: I'm sorry?</p> <p>21 MR. COLLINS: I have a health</p> <p>22 condition that's been bothering me some today.</p> |
| <p style="text-align: right;">Page 68</p> <p>1 And so essentially what the NRA is</p> <p>2 saying, you're only going to be able to talk</p> <p>3 about this, but you're not going to be able to</p> <p>4 talk about what actually occurred, what that</p> <p>5 fact witness thought, what they said. Any</p> <p>6 other fact witness gets up there, you'd be</p> <p>7 allowed to do that. And the courts recognize</p> <p>8 that. And they say when you put somebody at</p> <p>9 issue, when you file a lawsuit which they did</p> <p>10 in the first case -- they said you didn't</p> <p>11 comply with FRA's examination -- when you make</p> <p>12 that choice and you put that at issue, waiver's</p> <p>13 the only way you go. Otherwise it's a wrong of</p> <p>14 an unconstitutional magnitude.</p> <p>15 And that's what's happening here. We</p> <p>16 cannot defend ourselves without those</p> <p>17 documents. And so, your Honor, I agree with</p> <p>18 you. It is kind of unfair to ask the Court to</p> <p>19 do that. But given the importance, given the</p> <p>20 importance, I'd ask the Court to make a ruling</p> <p>21 at least with respect to that waiver argument,</p> <p>22 because it's crystal clear.</p> | <p style="text-align: right;">Page 70</p> <p>1 So I may need to step out briefly.</p> <p>2 THE COURT: Oh, whenever. Okay.</p> <p>3 MR. COLLINS: Okay. Thank you.</p> <p>4 THE COURT: All right. Do you want me</p> <p>5 to adjourn, or do you --</p> <p>6 MR. COLLINS: No. No, I do not. No,</p> <p>7 I do not.</p> <p>8 THE COURT: Okay. All right.</p> <p>9 MR. MCKENNEY: Should we go one</p> <p>10 interrogatory by one? It seems like the most</p> <p>11 practical way, your Honor.</p> <p>12 THE COURT: Well, let's do the -- your</p> <p>13 interrogatories. And then I'll allow a</p> <p>14 response, and then we'll do your next one. And</p> <p>15 we'll make a decision on each interrogatory as</p> <p>16 -- I mean each motion.</p> <p>17 MR. MCKENNEY: Would you like me to go</p> <p>18 through all of them first?</p> <p>19 THE COURT: No, one at a time. One at</p> <p>20 a time. Respond. I'll decide. Then go to the</p> <p>21 next.</p> <p>22 MR. MCKENNEY: Okay.</p> |

Transcript of hearing

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| <p style="text-align: right;">Page 147</p> <p>1 problem, we want to know the finances of all</p> <p>2 your officers and all your directors, because</p> <p>3 we want to have that in our back pocket. It</p> <p>4 has nothing to do with the case. It's a gross</p> <p>5 invasion of privacy. The case law that relates</p> <p>6 to net worth of parties does not apply to</p> <p>7 officers and employees of the party.</p> <p>8 THE COURT: Motion's denied.</p> <p>9 MR. MCKENNEY: Thank you, your Honor.</p> <p>10 That's all we have.</p> <p>11 THE COURT: All right. Now, it's now</p> <p>12 half a day. It was slotted for a half day.</p> <p>13 Probably another half day in order to hear the</p> <p>14 balance of the case. Would you suggest that's</p> <p>15 true?</p> <p>16 MR. SCHERTLER: It's at least a few</p> <p>17 more hours.</p> <p>18 MR. COX: Your Honor, just to let you</p> <p>19 know, if -- because it was represented a half a</p> <p>20 day, we don't have a problem if the Court sees</p> <p>21 fit to set this down for another date certain</p> <p>22 to finish this.</p> | <p style="text-align: right;">Page 149</p> <p>1 just going back to my argument about conserving</p> <p>2 the resources of this court, we would still</p> <p>3 move to ask the Court to deny the motion to</p> <p>4 amend the complaint.</p> <p>5 MR. COLLINS: Your Honor, we think it</p> <p>6 should be granted. But I don't need to say</p> <p>7 anything more than I said so far. And I think</p> <p>8 the next hearing will help us understand.</p> <p>9 THE COURT: In light of the ultimate</p> <p>10 timing of these matters in terms of when this</p> <p>11 matter's going to be tried, the Court will</p> <p>12 grant the motion to amend understanding that</p> <p>13 there may be collateral estoppel at some point</p> <p>14 if this matter's tried in the Texas court.</p> <p>15 All right.</p> <p>16 MR. DICKIESON: Your Honor, there's</p> <p>17 one more very short matter that I think we're</p> <p>18 close to an agreement that counsel fly in from</p> <p>19 Dallas whether or not documents in the Virginia</p> <p>20 case --</p> <p>21 THE COURT: You came from Dallas with</p> <p>22 nothing -- not much to say; huh?</p> |
| <p style="text-align: right;">Page 148</p> <p>1 THE COURT: Okay. Let's do this</p> <p>2 first. As it appears regardless of the Court's</p> <p>3 ruling with regard to the issue on amending the</p> <p>4 complaint, this case will take at least four</p> <p>5 weeks. So to that extent, I guess I'm going to</p> <p>6 have to send you to chambers and, one, remove</p> <p>7 the case from the docket in April and,</p> <p>8 secondly, find four weeks in the year 2021.</p> <p>9 That being the case, the balance of</p> <p>10 the matters scheduled for today's hearing can</p> <p>11 be heard at a later date. And we'll schedule</p> <p>12 those for another day at your convenience after</p> <p>13 you've gotten the new trial date.</p> <p>14 It seems to me kind of to short</p> <p>15 circuit this, again, I'm not likely to be the</p> <p>16 trial judge in this case. So I will withhold</p> <p>17 any ruling on the issue with regard to the</p> <p>18 in-camera review of the documents since I</p> <p>19 suspect ultimately the trial judge is going to</p> <p>20 have to do that once you -- this matter is</p> <p>21 ultimately decided when it's going to be heard.</p> <p>22 MR. SCHERTLER: Your Honor, I think</p> | <p style="text-align: right;">Page 150</p> <p>1 MR. MASON: Just a few things briefly,</p> <p>2 your Honor.</p> <p>3 THE COURT: Say something. I don't</p> <p>4 want you to come from Dallas and without having</p> <p>5 anything to say. Tell me anything.</p> <p>6 MR. COLLINS: I'm from Dallas too,</p> <p>7 your Honor.</p> <p>8 MR. MASON: Thank you, your Honor.</p> <p>9 And I'll try and be -- Brian Mason from Dorsey</p> <p>10 & Whitney. I'm counsel for Ackerman McQueen in</p> <p>11 the Dallas federal lawsuit.</p> <p>12 The issue I wanted to address briefly</p> <p>13 was the motion to modify the Virginia</p> <p>14 protective order that was filed.</p> <p>15 THE COURT: Okay.</p> <p>16 MR. MASON: And just to give you a</p> <p>17 little bit of context on kind of how we got to</p> <p>18 this point, we talked about the federal case.</p> <p>19 There was an amended complaint filed by the NRA</p> <p>20 back in October. And in that complaint, that</p> <p>21 amended complaint, all of these additional</p> <p>22 issues were alleged.</p> |

Transcript of hearing

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1 CERTIFICATE OF REPORTER

2

3 I, Karen M. Smith, the stenographic
4 reporter who was duly sworn to well and truly
5 report the foregoing proceedings, do hereby
6 certify that they are true and correct to the
7 best of my knowledge and ability; and that I
8 have no interest in said proceedings, financial
9 or otherwise, nor through relationship with any
10 of the parties in interest or their counsel.

11 IN WITNESS WHEREOF, I have hereunto set my
12 hand this 13th day of February, 2020.

13



14

Karen M. Smith

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